

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. 3:13-cr-30083-DRH-1
)	
JOSE MANUEL GOYS, Jr.)	
)	
)	
Defendant.)	

ORDER

HERNDON, District Judge:

INTRODUCTION

This matter comes before the Court on the defendant's *pro se* motion (Doc. 44). The defendant asks the Court "to grant in forma pauperis (IFP) for costs pertaining to all transcripts and court filings on appeal." (Doc. 44). The defendant further states that "transcripts are integral to the Writ of Habeas Corpus motion that is in the process of being filed and it cannot effectively be filed without reviewing the material transcripts, which contain all the details needed for an appropriate writ." Finally, in closing, the defendant states the Court should grant "in forma pauperis status so [defendant] can file [his] 28 USC § 2255 in a timely manner." Considering the above, the Court interprets the defendant's motion as a motion to receive transcript from sentencing hearing without cost.

BACKGROUND

On December 30, 2013, the defendant entered a plea of guilty to Count 1 of the Indictment, charging him with violating 18 U.S.C. § 1349 (Conspiracy to Commit Mail Fraud and Wire Fraud). On January 21, 2013, an order was entered adopting the magistrate's Report and Recommendation as to the defendant (Doc. 29). On May 2, 2014, a sentencing hearing was held and defendant was sentenced to 96 months imprisonment on Count 1 of the Indictment (Doc. 37). Further, the Court ordered the defendant to be placed on supervised release for a term of 3 years and ordered the defendant to pay a fine and special assessment (Doc. 37). The defendant did not file a notice of appeal.

ANALYSIS

Defendant states that he is in need of transcripts for the purpose of filing a § 2255 petition. He asks this court to order that he be allowed to proceed in forma pauperis because he cannot afford the fees for transcripts necessary to the filing of his § 2255 petition. Defendant further states that he is indigent and without income to pay the costs of the proceeding or for the requested documents.

This court initially notes that, because the defendant did not appeal his conviction or sentence, no transcripts have been prepared in this case. Additionally, because the defendant pleaded guilty to the charge against him, no trial was held, so no trial transcript could be prepared.

28 U.S.C. § 753(f) allows an indigent defendant to obtain the preparation of free transcripts to prosecute a § 2255 action, "if the trial judge ... certifies that the

suit ... is not frivolous and that the transcript is needed to decide the issue presented by the suit.” 28 U.S.C. § 753(f). However, the defendant has not yet filed the § 2255 action. Accordingly, the Court is unable to certify that the suit is not frivolous at this time. Because the defendant has not yet filed a § 2255 motion, he is not eligible for transcripts under § 753(f).


This court notes that, once the defendant has filed his Motion under 28 U.S.C. § 2255, he may file a motion requesting the preparation of transcripts under § 753(f). If this court concludes that the defendant's motion is not frivolous and that transcripts are needed to decide an issue presented in the motion, this court will order the preparation of the transcripts at that time.

For the reasons stated, the defendant's *pro se* motion (Doc. 44) is DENIED.

IT IS SO ORDERED.

Signed this 3rd day of February, 2015.

Digitally signed
by David R.
Herndon
Date: 2015.02.03
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United States District Court